

DRAFT
Meeting Minutes

Governor's Electronic Health Records Task Force
Executive Directive 6 (2005)

**Subcommittee #4 - Technology, Interoperability, Governance,
Policy, and Legal Issues in EHR**

September 9, 2005 10am - Noon
Patrick Henry Building, Conference Room 4020

The meeting was called to order by Delegate John O'Bannon at approximately 10:15 a.m.
Subcommittee members in attendance were:

- Barbara Baldwin – UVA Health Systems
- Jeff Burke – Bon Secours Health Systems
- Eugene Huang – Secretary of Technology
- Tom Hanes – Sands Anderson Marks Miller via telephone
- Rick Mears – Owens and Minor
- John O'Bannon – Neurologist and Member of the Virginia House of Delegates

Due to scheduling conflicts, absent subcommittee members were:

- Carl Gattuso – VCU Health Systems
- David Hollins – Hospital Corporation of America
- Becky Snead – Virginia Pharmacy Association

Subcommittee staff in attendance were:

- Debbie Secor – Enterprise Service Director, Health and Human Services Secretariat, VITA
- Diane Horvath – Manager, Legal and Legislative Services, VITA
- Ashley Boyd – Special Assistant, Office of the Secretary of Technology

Members of the public present were:

- Mary Zdanius from Gateway
- Chris Doss from Capital Strategies
- Fred Norman from Commonwealth of Virginia Consulting

MEETING AGENDA

- **Approve Minutes of August 19 Meeting**

Draft minutes were approved as presented.

- **Discuss Privacy, Security, Governance, Policy, and Legal Issues**

Staff commented that they have been trying to find common threads throughout the prior meetings in anticipation of compiling a draft report from Subcommittee # 4. It appears that nothing in the Code of Virginia is an impediment to producing an electronic health record. A question was asked regarding this: If there is nothing in the Code of Virginia to slow things down, is there anything that could help speed things up? For example, are electronic signatures legal? Currently, physicians can fax prescriptions to pharmacists, but they cannot send a prescription electronically with an electronic signature. Staff reported that the Code gives electronic signatures the same legal effect as traditional “wet” signatures. (See Title 1 of the Code of Virginia, section 1-13.32 and Title 59.1 of the Code of Virginia, section 59.1-501.7.) It was suggested that the regulations of the Boards of Medicine and Pharmacy should be encouraging the use of electronic health records and electronic signatures.

It has been suggested that legislation which relieves physicians of malpractice from using an electronic health record could be introduced. Why would using an electronic health record be an issue in court? The subcommittee concluded that this should only be an issue if the record were incorrect or erroneous, which could also happen with paper records. An example was cited where a physician receives an incorrect electronic health record and makes an incorrect diagnosis. It was recommended that a closer look be taken at how the Code addresses this through plaintiff and defense bar associations.

Regarding governance, the subcommittee expressed an interest in what other states are saying about the role of government within electronic health records. The word “governance” itself is tricky when it comes to describing the involvement of government, quasi-government, and private entities. Whatever “governance” may mean in this context, it involves the early involvement of key stakeholders and multi-disciplines. Any form of governance should represent the population.

In order to move forward with EHR in Virginia, it was noted that we should focus on some specific benchmarks, targets, and performance measures. We seem to be working from a high level perspective, so we need to translate this to more specifics. There are pilot projects being recommended within other subcommittees. Delegate O’Bannon discussed his suggestion to develop a pilot project that connects all the emergency departments in the Richmond metropolitan area. Since patient care would be directly affected in this pilot, the project would be something tangible by which to collect benchmark data. It is desirable to perhaps get all three large health provider systems (VCU/MCV, Bon Secours, and Henrico Doctors) in the metropolitan area to agree to share electronic health data. Physicians need to know that a patient has been to another emergency room for treatment before a diagnosis is made at a different hospital.

In order to move forward into something more tangible, it was noted that we must look at the concept of the master patient index. Most subcommittee members agreed that it would be difficult to move forward without developing this. The Virginia Department of Health currently uses a master patient index of some kind to collect bioterrorism information in the NOVA region through a project known as ESSENCE II. The Health Department also collects immunization information.

Concerning the master patient index, it was noted that it probably would not be a good idea to use social security numbers for this, nor would it be desirable to assign a number to every citizen in Virginia. Instead of assigning numbers, would there be ways to use technology to manage this process? Creating the master patient index also becomes an infrastructure issue that needs to be addressed. It was agreed that Subcommittee # 4 might be able to recommend ways to form a master patient index. In order to develop the data elements for the master patient index, it might be helpful to match these with the Centers for Medicare and Medicaid Services (CMS). CMS defines key data elements and provides financial incentives if targets are hit. It might also be helpful to look at what the Health Department is doing with ESSENCE II. However this is accomplished, it was agreed that a repository of patient clinical results should not be centralized. Placing all this information in one centralized database is not desirable for many reasons, including security, redundancy, privacy, and accessibility. However, the subcommittee recognized the need to have a central broker for the master patient index and discussed whether the Virginia Department of Health could serve in this role.

Regarding security, the subcommittee felt that there should not be a problem with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) in the creation of an EHR system as long as entities understand how information is exchanged and everyone agrees. HIPAA sets privacy and security standards and addresses business continuity but not necessarily redundancy.

To move forward with EHR in Virginia, how do we overcome the barrier of dollars for investment in this process? The federal government has focused on regional health information organizations (RHIOs). Some members of the Task Force seem to agree that RHIOs are the place to start since this is where the federal government is currently focusing money. Others disagree and indicate that forming a RHIO “puts the cart before the horse” by creating a clearinghouse mechanism to exchange electronic health records before encouraging the creation of EHR in the first place. It was stated that if a RHIO is formed in Virginia, it could be the keeper of the master index while the patient information itself remains decentralized.

- **Discuss Subcommittee’s Draft Report**

A draft of the subcommittee’s report is due September 15, 2005, to Secretary Woods. The format of the draft report was discussed. Staff noted that a report template had been circulated by Task Force staff which adopted the report model used in Florida which was sent to Governor Jeb Bush. Given the compressed time frame between the final subcommittee meeting and the report deadline, the subcommittee members may not get to

review the draft before it is submitted, but will have ample time to review, comment, and edit the subcommittee's report before the next Task Force meeting on October 3, 2005.

- **Call for Public Comment and Other Business**

There being no public comment and no other business to come before Subcommittee # 4, the meeting was adjourned by Secretary Huang at 11:30 a.m.